

22. Parties who choose to file by paper should also submit their comments on diskette. Parties should submit diskettes to Sarah Mahmood, Media Bureau, 445 12th Street SW., Room 4-C824, Washington, DC 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible form using MS DOS 5.0 and Microsoft Word, or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the party's name, proceeding (including the lead docket number in this case MB Docket No. 03-50), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, referable in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554.

23. Written comments by the public on the proposed and/or modified information collections are due April 30, 2003. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before May 30, 2003. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jbherman@fcc.gov and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to jthornto@omb.eop.gov.

II. Initial Regulatory Flexibility Analysis

24. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided in paragraph 17 of the item. The Commission will send a copy of this

NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

25. The basis of this *NPRM* is our concern to assess the need to protect the emergency and distress frequency at 406.025 MHz from cable system operations in order to promote the safety of life and property. We also aim to streamline the rules by eliminating outdated regulations and making some minor changes as detailed below.

26. We seek comment on the following objectives which are proposed for consideration in this *NPRM*:

- Whether to provide for the protection of emergency and distress frequency 406.025 MHz by updating § 76.616 to include that frequency in the group of protected frequencies;
- Whether the industry believes that unused or discontinued CARS licenses should be forfeited or cancelled;
- Whether to include signal leakage restrictions among the other requirements within Part 76 listed in § 76.1510 that apply to open video systems;
- Whether to eliminate of §§ 76.618 and 76.619 because the date after which operators on these were grandfathered to continue operations ended on July 1, 1990; and
- Whether to effect the miscellaneous amendments which exclusively involve typographical errors or operations that have become obsolete.

B. Legal Basis

27. The proposed action is authorized under Sections 4, 4(i), 157, 303, 303(g), 303(r), and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 157, 303, 303(g), 303(r), 307.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

28. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" under Section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any

additional criteria established by the Small Business Administration ("SBA").

29. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small government jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 87,525 governmental entities in the United States. This number includes 38,978 counties, cities, and towns: of these, 37,566, or 96%, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. Below, we further describe and estimate the number of small entity licensees and regulates, including cities, counties, farms, villages, and other small organizations that may be affected by these rules.

30. The rules we adopt as a result of this *NPRM* protect the emergency and distress frequency 406.025 MHz from interference from cable system operations. The nearest cable frequency is a color carrier approximately 800 kHz above the emergency and distress frequency at 406.83 MHz.

31. *Small MVPDs*. SBA has developed a definition of small entities for cable and other program distribution services, which includes such companies generating \$12.5 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to the Census Bureau, there were 1,423 such cable and other program distribution services generating less than \$12.5 million in revenue. We address below services individually to provide a more precise estimate of small entities.

32. The Commission has developed, with SBA's approval, its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since